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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,583	03/18/2004	George E. Spooner JR.	84,040	4137

7590 06/18/2009  
Office of Counsel Code OC4  
Naval Surface Warfare Center  
Indian Head Division  
101 Strauss Ave., Bldg. D-31  
Indian Head, MD 20640-5035

EXAMINER
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CLEMENT, MICHELLE RENEE

ART UNIT	PAPER NUMBER
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3641

MAIL DATE	DELIVERY MODE
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06/18/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/807,583	<b>Applicant(s)</b> SPOONER, GEORGE E.	
	<b>Examiner</b> Michelle (Shelley) Clement	<b>Art Unit</b> 3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 5-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 3/30/09 have been fully considered but they are not persuasive. In response to applicant's contention that Jurek fails to include the rectangular recess radially extending completely through the arcuate peripheral surface so that the rectangular recess is oriented opposite the planar peripheral surface, it is noted that Jurek discloses such structure. Jurek discloses an inertia firing pin 63 sitting in a recess in the tool head (clearly the firing pin is not integral to the tool head and must sit in a recess, see Figure 7). Clearly the recess is rectangular, extends completely through the arcuate peripheral surface (the surface is merely the surface and there is no requirement how deep below the surface the recess must extend), and the recess is oriented opposite the planar peripheral surface. Applicant's contention that Jurek discloses a system designed for use on a .22 caliber rifle and not as a rocket loading and unloading tool, it is noted that 1) applicant has not claimed a rocket loading and unloading tool, but merely a tool head and the term "tool head" has no specific meaning in the art (i.e. anything is a tool head, a rock can be a tool head), 2) the recitation "tool head" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951) and 3) the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably

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distinguish the claimed invention from the prior art. Furthermore, applicant has not *claimed* any intended use.

2. Applicant's remaining arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

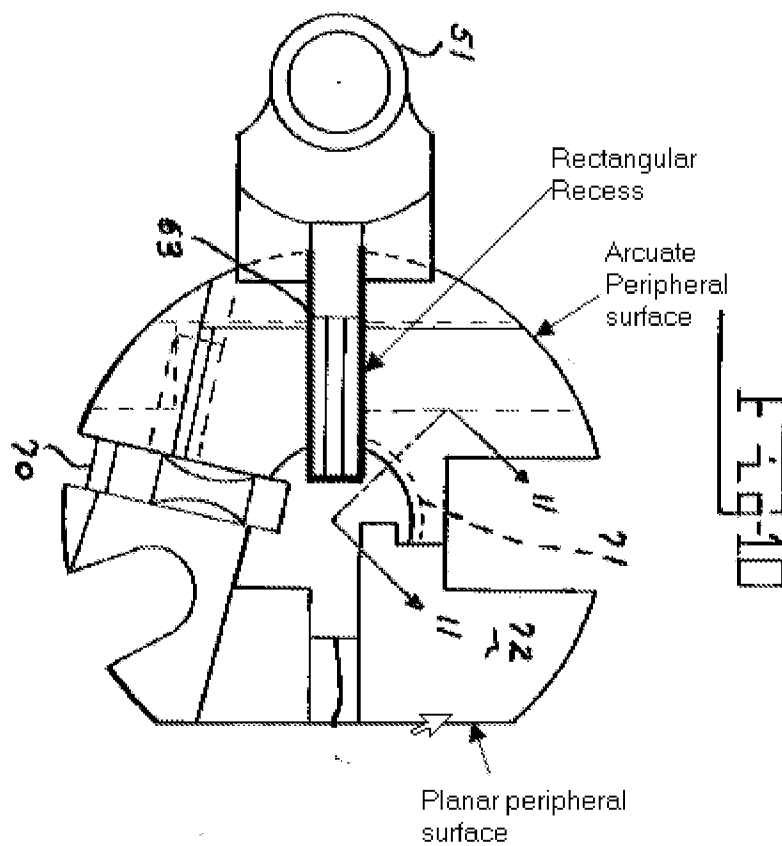
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

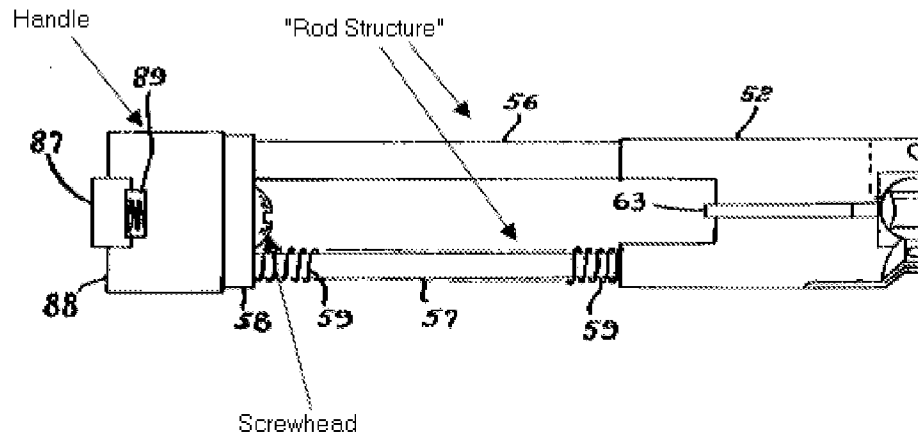
4. Claims 5-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Jurek (US Patent # 4,069,607). Jurek discloses a bolt head (reference 52) (i.e. tool head) comprising: an arcuate peripheral surface of the head comprising a shape conforming to a segment of a cylinder with said cylinder having a predetermined axis running a length of the cylinder; a planar peripheral surface subtending the arcuate peripheral surface, the planar peripheral surface extends perpendicular to the arcuate peripheral surface and is disposed oppositely from a center of an arc which conforms to the arcuate peripheral surface; a forward axial end face terminating the arcuate peripheral surface and the planar peripheral surface, the forward axial end face includes at least one planar face surface which extends normal to the predetermined axis and a rectangular recess (the recess in which firing pin 63 resides)<sup>3</sup> being defined by the tool head and axially extending into the tool head in a first direction along the predetermined axis from the forward axial end face, wherein the rectangular recess radially extends openly inward from the arcuate peripheral surface into the tool head in a second direction perpendicular to the predetermined

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axis, the rectangular recess radially extends completely through the arcuate peripheral surface so that the rectangular recess is oriented opposite the planar peripheral surface. The forward axial end face comprises an arcuate outer planar face surface, which extends radially inward from the arcuate peripheral surface, and a central planar face surface (reference 71) disposed radially within the arcuate outer planar face surface and recessed inwardly of the head from the arcuate outer planar face surface in a direction along the predetermined axis and wherein the central planar face surface is substantially perpendicular to the arcuate outer planar face surface. Further comprising a rod structure disposed at an end of the tool head oppositely of the forward axial end face that has the ability to attach a handle. The head is a single piece of unitary construction. The predetermined axis is perpendicular to the planar peripheral surface. The rectangular recess is a slot shaped configuration comprising a width oriented transverse to the predetermined axis. The tool head comprising a screwhead releasably attaching a handle.

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### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jurek as applied to claim 5 above. Jurek discloses the claimed invention except for the specific material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the head from the specific material that dissipates static electricity, since it has been held to be within the general skill of a worker in the art to select a known material on the

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basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michelle (Shelley) Clement/  
Primary Examiner, Art Unit 3641